

² The plaintiffs whose complaints are being challenged by Takeda include Blue Seal Feeds, Inc., et al.; Cactus Operating Ltd., et al.; Marshall Durbin Farms, Inc., et al.; The Quaker Oats Company, et al.; Southern States Cooperative, Inc., et al.; and Tyson Foods, Inc., et al. (hereafter, the “Blue Seal Feeds plaintiffs”).

deny Takeda's Motion to Dismiss.

I. DISCUSSION

Takeda argues that this Court should dismiss the Blue Seal Feed plaintiffs' complaints, because Takeda was not properly served with these complaints pursuant to the terms of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (Nov. 15, 1965) ("the Hague Convention"). Specifically, Takeda contends that service was improper, because (1) the Blue Seal Feeds plaintiffs summarized all six of the operative complaints in a single "Summary of the Documents to be Served" form ("summary form"), rather than providing a separate summary form for each complaint; and (2) the Blue Seal Feeds plaintiffs did not adequately list every one of the captioned parties in the summary form itself. This Court finds that both arguments lack merit.

First, neither of the alleged errors cited by Takeda was deemed to be a problem by the Japanese Central Authority, which reviewed the submission and served it on Takeda pursuant to the Hague Convention procedures. The fact that the Japanese Central Authority deemed the submission adequate and provided the Blue Seal Feeds plaintiffs with a certificate of service constitutes *prima facie* evidence of compliance with the Hague Convention procedures. See Northup King Co. v. C.O.P.S.A., 51 F.3d 1383, 1389 (8th Cir. 1995). Had the service been inadequate in any material respect, the Central Authority undoubtedly would have complied with its duty to "promptly inform the applicant and specify its objections to the request." Id.; see also Hague Convention, arts. 2-6. "By not objecting to the documents and by certifying service the

Central Authority indicated that the documents complied with the Convention”³ Northup King Co., 51 F.3d at 1389.

To rebut this *prima facie* showing, Takeda must establish that it lacked actual notice of the proceedings or that the purported technical deficiencies prejudiced this defendant in some significant way. Id. Takeda fails to meet this burden. Service under both the Hague Convention and the Federal Rules of Civil Procedure is intended as “a notice-giving device.” Hagmeyer v. U.S. Dept. of Treasury, 647 F. Supp. 1300, 1303 (D.C. Cir. 1986); Fed. R. Civ. P. 4(f) (providing that service may be effected outside the United States “by any internationally agreed means *reasonably calculated to give notice*, such as those means authorized by the Hague Convention”) (emphasis added). The evidence clearly establishes that Takeda is aware of the claims against it. Not only are the Blue Seal Feeds complaints identical to those served on Takeda’s United States subsidiaries, but they contain the same allegations to which Takeda pleaded guilty in criminal proceedings before the United States District Court in Texas. Moreover, the Blue Seal Feeds plaintiffs named in the six complaints at issue here are among the 239 companies that opted out of the class settlement, to which Takeda is a signatory. These facts plainly establish that Takeda is fully aware of the claims against it and of the details of the companies who brought these allegations. Therefore, Takeda cannot establish that it lacked actual notice in this case.

Similarly, Takeda has shown no evidence that it was prejudiced in any material way by these alleged errors. The form and contents of the summary form is designed to provide the defendant with specific information about the complaints in which it has been named, including

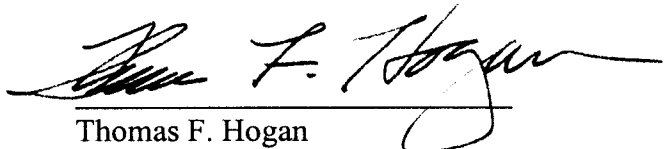
³ The Blue Seal Feeds plaintiffs served other foreign defendants in this action in the same manner in which they served Takeda. Like the Japanese Central Authority, the Central Authorities in Germany, France, Belgium, the Netherlands, and Switzerland have all certified service without objection.

such information as the name and address of the requesting authority, the particulars of the parties, the nature and purpose of the documents, the nature and purpose of the proceedings, and the time limits for responding to the complaints. See Hague Convention Annex. All of this information was readily apparent and accessible to Takeda, despite the fact that only one summary form was used for the six complaints and that the parties were listed on the summary form by reference to the attached complaints.⁴ First, the six complaints were appended to the summary form for Takeda's consideration. Second, as discussed above, Takeda was intimately familiar with the particulars of these parties, the nature and purpose of the complaints, and the nature and purpose of these proceedings, as well as the time limits for responding to the above complaints. Accordingly, because Takeda has provided the Court with no evidence that they lacked actual notice in this case or that the procedures used by the Blue Seal Feeds plaintiffs, and certified by the Japanese Central Authority, in any way prejudiced this defendant, the Court finds Takeda's Motion to Dismiss to be without merit.

II. CONCLUSION

For the foregoing reasons, Takeda's Motion to Dismiss the Blue Seal Feeds plaintiffs' complaints for insufficient service of process is denied. An order will accompany this Opinion.

March 9th, 2001


Thomas F. Hogan
United States District Judge

⁴ Takeda fails to provide any controlling authority for the proposition that a single summary form may not be used or that the parties may not be listed on the summary form by reference to attached complaints.